(9)

Supreme Court, U.S.
FILED
FEB 19 2002
OFFICE OF THE CLERK

No. 01-595

In the Supreme Court of the United States

UNITED STATES OF AMERICA, PETITIONER

v.

ANGELA RUIZ

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

JOINT APPENDIX

THEODORE B. OLSON*
Solicitor General
Department of Justice
Washington, D.C. 20530-0001
(202) 514-2217

Counsel of Record
for Petitioner

STEVEN F. HUBACHEK*
BENJAMIN L. COLEMAN
Federal Public Defenders
of San Diego, Inc.
225 Broadway, Suite 900
San Diego, CA 92101-5008
(619) 234-8467

Counsel of Record
for Respondent

PETITION FOR WRIT OF CERTIORARI FILED: OCT. 9, 2001
CERTIORARI GRANTED: JAN. 4, 2002

29 pp

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UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA
(SAN DIEGO)

No. 99-CR-2604-ALL

UNITED STATES OF AMERICA, PLAINTIFF

v.

ANGELA RUIZ, DEFENDANT

DOCKET ENTRIES

DATE	DOCKET NUMBER	PROCEEDINGS
8/13/99	—	DEFENDANT Angela Ruiz arrested [3:99-m-2065] (avl) [Entry date 08/17/99]
8/16/99	1	COMPLAINT against defendant Angela Ruiz, signed by Magistrate Judge Louisa S. Porter [3:99-m-2065] (avl) [Entry date 08/17/99]

* * * * *

DATE	DOCKET NUMBER	PROCEEDINGS
9/8/99	6	INDICTMENT by USA. Counts filed against Angela Ruiz (1) count (s) 1, 2. * * * [Entry date 09/13/99]
		* * * * *
10/12/99	10	Dft admits to all allegations, plea entered. * * * [Entry date 10/13/99]
		* * * * *
10/19/99	12	Minutes: Enter Order by Judge Howard B. Turrentine, Angela Ruiz changes plea to guilty as to count(s) 1. * * * [Entry date 10/20/99]
1/10/00	14	Minutes: Enter Order by Judge Howard B. Turrentine: sentencing Angela Ruiz (1) to count(s) 1 - the dft is committed to the custody of the BOP for 18 months, spv release for 3 years, $100 p/a, no fine, dft advised of appeal rights; Terminating defendant Angela Ruiz, Govt's oral motion to dismiss remaining cnt – granted. * * * [Entry date 01/11/00]

DATE	DOCKET NUMBER	PROCEEDINGS
1/12/00	15	JUDGMENT and Commitment issued to U.S. Marshal for Angela Ruiz by Judge Howard B. Turrentine (sld) [Entry date 01/12/00]
1/12/00	16	Notice of Appeal by defendant Angela Ruiz from Dist. Court decision Entered on 1/12/00 [15-1] (llb) [Entry date 01/13/00]
		* * * * *
1/25/00	—	TRANSCRIPT of proceeding held in San Diego, CA on 1/10/00 before the Honorable Howard B. Turrentine (sld) [Entry date 01/25/00]
		* * * * *

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

No. 00-50048

UNITED STATES OF AMERICA, PLAINTIFF-APPELLEE

v.

ANGELA RUIZ, DEFENDANT-APPELLANT

DOCKET ENTRIES

DATE	PROCEEDINGS
	* * * * *
10/12/00	ARGUED AND SUBMITTED TO Robert BOOCHEVER, A. W. TASHIMA, Richard C. TALLMAN [00-50048] (bg)
	* * * * *
3/5/01	FILED OPINION: REVERSED and REMANDED (Terminated on the Merits after Oral Hearing; Reversed; Written, Signed, Published, Robert BOOCHEVER, author; A. W. TASHIMA, concurring; Richard C. TALLMAN.) FILED AND ENTERED JUDGMENT. [00-50048] (wp)

DATE	PROCEEDINGS
	* * * * *
4/18/01	[4146475] Filed original and 50 copies Appellee USA petition for rehearing with suggestion for rehearing en banc (PANEL AND ALL ACTIVE JUDGES) 17 p. pages, served on 4/17/01 [00-50048] (wp)
4/23/01	Filed order (Robert BOOCHEVER, A.W. TASHIMA, Richard C. TALLMAN,): Defendant-Aplt Angela Ruiz, is requested to file a response to the petition for rehearing and rehearing en banc. The response is limited to 15 pages and shall be filed with 21 days of the date of this order. [00-50048] (wp)
5/14/01	Filed Appellant Angela Ruiz's response to petition for rehearing with suggestion for rehearing en banc. [4146475-1] served on 5/12/01 (PANEL AND ALL ACTIVE JUDGES) [00-50048] (wp)
	* * * * *
6/11/01	Filed order (Robert R. BEEZER, A.W. TASHIMA, Richard C. TALLMAN) Judges Boochever and Tashima have voted to deny the petition for rehearing. Judge Tashima has voted to deny the petition for rehearing en banc and Judge Boochever so recommends. Judge Tallman has voted

DATE	PROCEEDINGS
	to granted the petition for rehearing en banc. The full court has been advised of the petitions for rehearing en banc and no active judge has requested a vote on whether to rehear the matter en banc. The petition for rehearing and rehearing en banc are denied. [00-50048] (ca)
	* * * * *

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

No. 99-CR -2604-T

UNITED STATES OF AMERICA, PLAINTIFF

v.

ANGELA RUIZ, DEFENDANT

INDICTMENT

TITLE 21, U.S.C., SECS. 952 AND 960 - IMPORTATION OF MARIJUANA; TITLE 21, U.S.C., SEC. 841(a)(1) – POSSESSION OF MARIJUANA WITH INTENT TO DISTRIBUTE

AUGUST 1999 GRAND JURY

The grand jury charges"

Count 1

On or about August 13, 1999, within the Southern District of California, defendant ANGELA RUIZ did knowingly and intentionally import approximately 30.1 kilograms (approximately 66.3 pounds) of marijuana, a Schedule I Controlled Substance, into the United States from a place outside thereof; in violation of Title 21, United States Code, Section 952 and 960.

Count 2

On or about August 13, 1999, within the Southern District of California, defendant ANGELA RUIZ did intentionally possess, with intent to distribute, approximately 30.1 kilograms (approximately 66.3 pounds) of marijuana, a Schedule I Controlled Substance; in violation of Title 21, United States Code, Section 841 (a)(1).

DATED: September 8, 1999.

A TRUE BILL:

_____
Foreperson

GREGORY A VEGA
United States Attorney

By: _____
DAVID L. KATZ
Assistant U.S. Attorney

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA, PLAINTIFF

v.

ANGELA RUIZ, DEFENDANT

PLEA AGREEMENT

IT IS HEREBY AGREED between the plaintiff, UNITED STATES OF AMERICA, through its counsel, Gregory A. Vega, United States Attorney, and XXXXXX X. XXXXXX, [Special] Assistant United States attorney, and defendant, *, with the advice and consent of *, [Federal Defenders of San Diego, Inc.], counsel for defendant, as follows:

I.

THE PLEA

Defendant agrees to waive indictment and plead guilty to an information charging defendant with:

knowingly and intentionally importing approximately XX.XX kilograms/XX.XX pounds of marijuana, Schedule I Controlled Substance, into the United States from a place outside thereof, on or about *, 2000, within the Southern District of California, in violation of 21 U.S.C. §§ 952 and 960.

II.

NATURE OF THE OFFENSE

A. ELEMENTS EXPLAINED

Defendant understands that the offense to which defendant is pleading guilty has the following elements:

1. Defendant intentionally brought marijuana into the United States; and
2. Defendant knew that it was marijuana or some other prohibited drug.

B. ELEMENTS UNDERSTOOD AND ADMITTED - FACTUAL BASIS

Defendant has fully discussed the facts of this case with defense counsel. Defendant has committed each of the elements of the crime, and admits that there is a factual basis for this guilty plea. The following facts are true and undisputed:

On XXXXXXXXX XX, 2000, defendant entered the United States at the XXXXXX, California Port of Entry, driving a vehicle, which defendant knew concealed marijuana. The weight of the marijuana concealed in the vehicle is approximately XX.XX kilograms/XX.XX pounds.

III.

PENALTIES

Defendant understands that the crime to which defendant is pleading guilty carries the following penalties:

a. a maximum X years in prison;

b. a maximum $XXX,XXX fine;

c. a mandatory special assessment of $100.00 per count; and

d. a term supervised release of at lease X years but no more than X years. Defendant understands that failure to comply with any of the conditions of supervised release may result in revocation of supervised release, requiring defendant to serve in prison all or part of the term of supervised release.

IV.

DEFENDANT'S WAIVER OF TRIAL RIGHTS

Defendant understands that this guilty plea waives the right to:

A. continue to plead not guilty and require the Government to prove the elements of the crime beyond a reasonable doubt:

B. a speedy and public trial by jury;

C. the assistance of counsel at all stages of trial;

D. confront and cross-examine adverse witnesses;

E. present evidence and to have witnesses testify on behalf of defendant; and

F. not testify or have any adverse inferences drawn from the failure to testify.

V.

WAIVER OF RIGHT TO BE PROVIDED WITH IMPEACHMENT AND AFFIRMATIVE DEFENSE INFORMATION

The Government represents that any information establishing the factual innocence of the defendant known to the undersigned prosecutor in this case has been turned over to the defendant. The Government understands it has a continuing duty to provide such information establishing the factual innocence of the defendant.

The defendant understands that if this case proceeded to trial, the Government would be required to provide impeachment information relating to any informants or other witnesses. In addition, if the defendant raised an affirmative defense, the Government would be required to provide information in its possession that supports such a defense. In return for the Government's promises set forth in this agreement, the defendant waives the right to this information, and agrees not to attempt to withdraw the guilty plea or to file a collateral attack based on the existence of this information.

VI.

DEFENDANT'S REPRESENTATION THAT GUILTY PLEA IS KNOWING AND VOLUNTARY

Defendant represents that:

A. Defendant has had a full opportunity to discuss all the facts and circumstances of this case with

defense counsel and has a clear understanding of the charges and the consequences of this plea;

B. No one has made any promises or offered any rewards in return for this guilty plea, other than those contained in this agreement;

C. No one has threatened defendant or defendant's family to induce this guilty plea; and

D. Defendant is pleading guilty because in truth and in fact defendant is guilty and for no other reason.

VII.

AGREEMENT LIMITED TO U.S. ATTORNEY'S OFFICE SOUTHERN DISTRICT OF CALIFORNIA

This plea agreement is limited to the United States Attorney's Office for the Southern District of California, and cannot bind any other federal, state or local prosecuting, administrative, or regulatory authorities, although the Government will bring this plea agreement to the attention of other authorities if requested by the defendant.

VIII.

SENTENCING GUIDELINES

The defendant understands the sentence will be governed by the United States Sentencing Commission, *Guidelines Manual* effective November 1998 (the "Guidelines"). Defendant has discussed the Guidelines with defense counsel, and understands that the sentence cannot be determined until a presentence report

has been prepared by the U.S. Probation Office and defense counsel and the Government have had an opportunity to review and challenge the presentence report. Defendant understands that, under some circumstances, the Court may "depart" from the Guidelines and impose a sentences more severe or less severe than the Guidelines, up to the maximum in the statute of conviction

IX.

SENTENCE IS WITHIN SOLE DISCRETION OF THE JUDGE

This plea agreement is made pursuant to Federal Rule of Criminal Procedure 11(e) (1) (B). Defendant understands that the sentence is within the sole discretion of the sentencing judge. The Government has not made and will not make any representation as to what sentence defendant will receive. Defendant understands that the sentencing judge may impose the maximum sentence provided by statute, and is also aware that any estimate of the probable sentence by defense counsel is a prediction, not a promise, and is *not binding on the Court.* Likewise, the recommendation made by the Government is not binding on the Court, and it is uncertain at this time what defendant's sentence will be.

Defendant also has been advised and understands that if the sentencing judge does not follow any of the parties' sentencing recommendations, defendant nevertheless has no right to withdraw the plea.

X.

PARTIES SENTENCING RECOMMENDATIONS

A. BASE OFFENSE LEVEL AND GOVERNMENT'S RECOMMENDATIONS

The parties will jointly recommend the following Base Offense Level under the Sentencing Guidelines:

1. Base Offense Level [§2D1.1] XX
   * (Reflecting a reduction to approximate Net weight of XX.XX kilograms)

In addition, the Government will make the following sentencing recommendations:

2. Minor Role [§ 3B1.2(b)] -X

3. Acceptance of Responsibility [§ 3E1.1] -X

4. Departure for Fast Track [§ 5K2.0] -2
   (See paragraph H below)

   Resulting Offense Level XX

B. ACCEPTANCE OF RESPONSIBILITY

Notwithstanding paragraph A.3 above, the Government will *not* recommend any adjustment for *Acceptance of Responsibility* if defendant:

1. Fails to admit a complete factual basis for the plea at the time it is entered, or

2. Denies involvement in the offense, gives conflicting statements about that involvement, or is untruthful with the Court or probation officer, or

3. Fails to appear in court, or
4. Engage in additional criminal conduct, or
5. Attempts to withdraw the plea.

C. ADJUSTMENTS

Defendant hereby reserves the right to request, any additional downward adjustments. The Government will oppose any downward adjustment not set forth in Section X, paragraph A above.

D. NO AGREEMENT AS TO CRIMINAL HISTORY CATEGORY

There is no agreement as to defendant's Criminal History Category.

E. DEPARTURES

Defendant hereby reserves the right to request any additional downward departure, including any criminal history departures under USSG § 4A1.3. The Government will oppose any downward departure not set forth in Section X, paragraph A above.

F. "RELEVANT CONDUCT" INFORMATION

Defendant agrees that the facts in the "factual basis" paragraph of this agreement are true, and may be considered as "relevant conduct" under USSG § 1B1.3.

G. GOVERNMENT'S RECOMMENDATION REGARDING CUSTODY

The Government will recommend that defendant be sentenced to the low end of the guideline range found by the Court. However, if the Court adopts an offense

level or downward adjustment or departure below the Government's recommendations in this agreement, the Government will recommend a sentence as near as possible to what the sentence would have been if the Government's recommendation had been followed.

H. STIPULATED REMOVAL

Either before or immediately following sentencing, defendant agrees to appear before an Immigration Judge and stipulate to the entry of an order of removal. Prior to sentencing the defendants may be required to execute a "Stipulated Request for removal Order and Waiver of Hearing." Defendant understands that defendant will not be removed until defendant has served any criminal sentence imposed in this or any other case. Defendant further waives any right to appeal, reopen or challenge the removal order.

I. SPECIAL ASSESSMENT

The parties will jointly recommend that defendant pay a special assessment in the amount of $100.00 to be paid forthwith at time of sentencing. The parties do not recommend imposition of a fine or restitution order due to the defendant's limited financial prospects and because of the prohibitive cost of collection..

XI.

DEFENDANT WAIVES APPEAL AND COLLATERAL ATTACK

In exchange for the Government's concessions in this plea agreement, defendant waives, to the full extent of the law, any right to appeal or to collaterally attack the conviction and sentence, including any restitution

order, unless the Court imposes a sentence in excess of the high end of the guideline range based on an adjusted offense level of XX. If the custodial sentence exceeds that which corresponds to the defendant's criminal history at the high end of offense level XX, the defendant may appeal, but the Government will be free to support on appeal the sentence actually imposed. If defendant believes the Government's recommendation is not in accord with this agreement, defendant will object at the time of sentencing; otherwise the objection will be deemed waived.

XII.

CRIMES AFTER ARREST OR BREACH OF THE AGREEMENT WILL PERMIT THE GOVERNMENT TO RECOMMEND A HIGHER SENTENCE OR SET ASIDE THE PLEA

This agreement is based on the understanding that defendant has committed no criminal conduct since defendant's arrest on the present charges, and that defendant will commit no additional criminal conduct before sentencing. If the defendant has engaged in or engages in additional criminal conduct during this period, or breaches any of the terms of this agreement, the Government will not be bound by the recommendations in this agreement, and may recommend any lawful sentence. In addition, at its option, the Government may move to set aside the plea.

XIII.

ENTIRE AGREEMENT

This plea agreement embodies the entire agreement between the parties and supersedes any other agreement, written or oral.

XIV.

MODIFICATION OF AGREEMENT MUST BE IN WRITING

No modification of this plea agreement shall be effective unless in writing signed by all parties.

XV.

DEFENDANT AND COUNSEL FULLY UNDERSTAND AGREEMENT

By signing the agreement, defendant certifies that defendant has read it (or that it has been read to defendant in defendant's native language). Defendant has discussed the terms of this agreement with defense counsel and fully understands its meaning and effect.

XVI.

DEFENDANT SATISFIED WITH COUNSEL

Defendant has consulted with counsel and is satisfied with counsel's representation.

GREGORY A. VEGA
United States Attorney

DATED*

*
[Special] Assistant
U.S. Attorney

DATED

XXXXX XXXXX
Defense Counsel for
XXXXX XXXXX

IN ADDITION TO THE FOREGOING PROVISIONS TO WHICH I AGREE, I SWEAR UNDER PENALTY OF PERJURY THAT THE FACTS IN THE "FACTUAL BASIS" PARAGRAPH ABOVE ARE TRUE.

DATE

XXXXX XXXXXX
Defendant

I, am a citizen of the United States over the age of eighteen years and a resident of San Diego, County, California; my business address is Office of the U.S. Attorney, 880 Front Street, San Diego, California 92101-8893.

On this date, I served the within Appellee United States' Petition for Rehearing En banc in Court of Appeal No. 00-50048, by placing true copies thereof in a sealed envelope sent by Federal Express address as follows:

Clerk of the Court
U.S. Court of Appeals
of the Ninth Circuit
San Francisco, CA 94103-1526

and I deposited in the United States mail at San Diego, California, in an envelope bearing the requisite postage, a copy to:

Guadalupe Valencia
Federal Defenders of San Diego, Inc.
225 Broadway, Suite 900
San Diego, CA 92101-5008

the last known address.

I declare under the penalty of perjury that the following is true and correct.

Executed on April 17, 2001, in San Diego, California.

/s/ STACY MULLINS
STACY MULLINS

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF CALIFORNIA

No. 99CR2604-T

UNITED STATES OF AMERICA, PLAINTIFF

v.

ANGELA RUIZ, DEFENDANT

TRANSCRIPT OF PROCEEDINGS
HELD IN SAN DIEGO, CALIFORNIA
OCTOBER 19, 1999

BEFORE THE
HONORABLE HOWARD B. TURRENTINE

SAN DIEGO, CALIFORNIA TUESDAY, OCTOBER 19, 1999 9:00 A.M.

- -0O0- -

(Call to order of the Court.)

THE CLERK: Calling Item Number 2 on calendar, Case Number 99CR-2604, U.S.A. versus Angela Ruiz, on for motion hearing.

MR. WINROW: Good morning, your Honor. Scott Winrow for the United States.

MR. BRITT: Good morning, your Honor. Troy Britt with Federal Defenders on behalf of Ms. Ruiz,

who is in custody and not yet present. Your Honor, Ms. Ruiz is now present.

Your Honor, at this time, Ms. Ruiz would like to withdraw her not guilty plea and enter a guilty plea to count one on the indictment.

THE CLERK: Angela Ruiz, do you now desire to with draw your former plea of not guilty to count one of the indictment, charging you with importation of marijuana, and to plead guilty?

THE DEFENDANT: Yes.

THE CLERK: How do you now plead to count one of the indictment, guilty or not guilty?

THE DEFENDANT: Guilty.

THE CLERK: Counsel, do you waive reading of the count?

MR. BRITT: Yes.

THE CLERK: Please raise your right hand.

ANGELA RUIZ, DEFENDANT'S WITNESS, SWORN

THE COURT: Is there a plea bargain?

MS. BRITT: There is not, your Honor.

THE COURT: Very well.

Ms. Ruiz, you've just been placed under oath, that is, sworn to tell the truth. If you make any false statements during these proceedings, these statements

may later be used against you in a possible prosecution for perjury, that is, giving false testimony under oath.

You have a right to persist in your pleas of not guilty, and if the Court accepts your plea this morning, you've waived all right to a trial and an appeal from any adverse judgment.

Do you understand what I've just said to you?

THE DEFENDANT: Yes.

THE COURT: You have certain constitutional rights as they pertain to a trial in this matter, and I'm sure your counsel has discussed them with you, but let me re-advise you that you have a right to a speedy and public trial, a right to be tried by a jury, a privilege against self-incrimination, a right to be confronted by and cross-examine all witnesses who accuse you in this matter, and a right to use the Court's processes to subpoena witnesses to testify in your own behalf.

Do you understand these rights?

THE DEFENDANT: Yes, I do.

THE COURT: Do you wish to waive them and enter a plea of guilty?

THE DEFENDANT: Yes.

THE COURT: Do You understand that you're charged as follows, that on or about August the 13th, 1999, within the Southern District of California, that you knowingly and intentionally imported approximately 30 kilograms of marijuana, a Schedule I controlled substance?

That's the charge. Do you understand the charge?

THE DEFENDANT: I do.

THE COURT: The maximum penalty for this is five years in prison, a $250,00 fine, a maximum of three years' supervised release, and a penalty assessment of $100. That's the maximum penalty.

Do you understand that?

THE DEFENDANT: I do.

THE COURT: And if you were to go to trial in this matter, the burden would be on the Government to prove beyond a reasonable doubt that you knowingly brought marijuana into this country from a place outside thereof, in this case 31 kilos.

Do you understand the charge?

THE DEFENDANT: I do.

THE COURT: Are you satisfied with the services of your attorney?

THE DEFENDANT: Yes, I am.

THE COURT: And you've discussed the case with him in its entirety?

THE DEFENDANT: Yes

THE COURT: You're satisfied, as I say, with his services?

THE DEFENDANT: Yes, I am.

THE COURT: Accept the plea, Mr. Clerk.

THE CLERK: Now that you've been advised of your rights, the charge against you, and a possible sentence, how do you not plead to count one of the indictment, guilty or not guilty?

THE DEFENDANT: Guilty.

THE COURT: I didn't hear you. Speak into the microphone.

THE DEFENDANT: Guilty.

THE COURT: Tell us in your own words what you did, Ms. Ruiz.

MR. BRITT: Your Honor, if you don't mind—

THE COURT: You may assist her.

MR. BRITT: Thank you, your Honor. On August 13th, Ms. Ruiz drove a vehicle from Mexico into the United States at the Tacate port of entry, and that vehicle contained approximately 30.1 kilograms of marijuana, which she knew was illegal.

THE COURT: Is that a fair statement of what took place, that is, you were driving the car as you entered the border, and you knew there was marijuana in it?

THE DEFENDANT: Yes, I did.

THE COURT: Give us a sentencing date.

THE CLERK: January the 10th at 9:00 a.m.

MR. BRITT: Thank you, your Honor.

THE COURT: Very well.

MR. WINROW: Thank you, your Honor.

(Proceedings concluded.)

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

/s/ LORAINE CALDWELL [5/3/00]
Transcriber Date

FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

/s/ L.L. FRANCISCO
L. L. FRANCISCO, President
Echo Reporting, Inc.